IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	
Plaintiff,	
v.	
MERCY DOUGLASS HUMAN SERVICES CORPORATION d/b/a MERCY DOUGLASS HUMAN SERVICES CENTER, MERCY DOUGLASS CENTER, INC. d/b/a STEPHEN SMITH HOME FOR THE AGED	CIVIL ACTION NO.
Defendants.	

COMPLAINT

INTRODUCTION

The United States, through the United States Attorney for the Eastern District of Pennsylvania, brings this civil action under the False Claims Act, 31 U.S.C. § 3729, et seq., and at common law, alleging that Mercy Douglass Human Services Corporation, d/b/a Mercy Douglass Human Services Center (hereinafter “Mercy Douglass”)and Mercy Douglass Center, Inc., d/b/a Stephen Smith Home for the Aged (hereinafter “Stephen Smith Home”), knowingly submitted and collected on claims submitted to the United States for services associated with the care rendered to the elderly residents of Mercy Douglass and Stephen Smith Home, when, in fact, these claims were false in that the care provided by defendants was, in fact, not adequate.

The defendants' nursing homes are located in West Philadelphia and largely serve residents who have their care paid for by the Medical Assistance Program. Virtually all of the residents of defendants' nursing homes are frail and vulnerable elderly with little potential for discharge from the facilities. The United States contends that defendants' facilities failed to provide basic care such as adequate nutrition and the prevention and treatment of pressure ulcers (bed sores) at the minimum quality of care that is required by federal and state law and regulation.

LEGAL AND REGULATORY FRAMEWORK

Congress, in the Omnibus Budget Reconciliation Act of 1987 ("OBRA '87"), enacted the Nursing Home Reform Act, 42 U.S.C.A. §1396r et seq., (hereinafter "the Act") which took effect on October 1, 1990.

Defendants are "nursing facilities" covered by the Act. A nursing facility is defined in the Act as "an institution...which--

(1) is primarily engaged in providing to residents--

(A) skilled nursing care and related services for residents who require medical or nursing care,
(B) rehabilitation services for the rehabilitation of injured, disabled, or sick persons, or
(C) on a regular basis, health-related care and services to individuals who because of their mental or physical condition require care and services (above the level of room and board) which can be made available to them only through institutional facilities, and is not

> primarily for the care and treatment of mental diseases; .....

42 U.S.C.A. § 1396r(a).

The Act mandates that nursing facilities comply with federal requirements relating to the provision of services. 42 U.S.C.A. § 1396r(b). Specifically, the Act requires care for residents which, at a minimum, maintains their quality of life: "A nursing facility must care for its residents in such a manner and in such an environment as will promote maintenance or enhancement of the quality of life of each resident." 42 U.S.C.A. § 1396r(b)(1)(A).

Additionally, the Act mandates that a nursing facility "provide services and activities to attain or maintain the highest practicable physical, mental and psychosocial well-being of each resident in accordance with a written plan of care which-

> (A) describes the medical, nursing, and psychosocial needs of the resident and how such needs will be met;..."

42 U.S.C.A. § 1396r(b)(2)(A).

The nursing facility must fulfill the residents' care plans by providing, or arranging for the provision of, inter alia, nursing and related services and medically-related social services that attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident; pharmaceutical services; and dietary services that assure that the meals meet the daily nutritional and special dietary needs of each resident. 42 U.S.C.A. § 1396r(4)(A)(i-iv).

Defendants participate in both the Medicare and Medicaid Programs. The Medicare Program is a health insurance program for individuals 65 years and older, certain disabled individuals under age 65 and people of any age who have permanent kidney failure. The Medicare statute is codified at 42 U.S.C.A. § 1395 (Title XVIII of the Social Security Act).

The Medical Assistance Program, also known as Medicaid, is a joint federal-state program funded under Title XIX of the Social Security Act. The Department of Public Welfare administers the Medical Assistance Program in Pennsylvania.

The Social Security Act sets standards which skilled nursing facilities must meet in order to participate in the Medicare Program or the Medicaid Program. These requirements are set forth at 42 C.F.R. § 483.1 et seq.

Federal regulations, when addressing quality of care concerns, mandate that "[e]ach resident must receive and the facility must provide the necessary care and services to attain or maintain the highest practicable physical, mental, and psychosocial well-being, in accordance with the comprehensive assessment and plan of care." 42 C.F.R. § 483.25. The regulations specifically address the area of nutrition:

> (i) **Nutrition**. Based on a resident's comprehensive assessment, the facility must ensure that a resident--

(1) Maintains acceptable parameters of nutritional status, such as body weight and protein levels, unless the resident's clinical condition demonstrates that this is not possible; and

(2) Receives a therapeutic diet when there is a nutritional problem. 42 C.F.R. § 483.25(i).

The federal regulations also provide that pressure sores be adequately treated as follows:

(c) **Pressure sores**. Based on the comprehensive assessment of a resident, the facility must ensure that--

(1) A resident who enters the facility without pressure sores does not develop pressure sores unless the individual's clinical condition demonstrates that they were unavoidable; and

(2) A resident having pressures sores receives necessary treatment and services to promote healing, prevent infection and prevent new sores from developing.

42 C.F.R. § 483.25(c).

Defendants Mercy Douglass and Stephen Smith Home are licensed long-term care (nursing) facilities under federal and state law and are certified to participate in the Medicare and Medical Assistance Programs. As a prerequisite to enrollment as a provider in the Medical Assistance Program, all of the long-term care facilities that are the subject of this Complaint

entered into provider agreements and agreed to the following provisions:

> 1. That the submission by, or on behalf of, the Facility of any claim, either by hard copy or electronic means, shall be certification that the services or items from which payment is claimed actually were provided to the person identified as a medical assistance resident by the person or entity identified as the Facility on the dates indicated.
>
> *******
>
> 5. That the Facility's participation in the Medical Assistance Program is subject to the laws and regulations effective as to the period of participation, including all of those that may be effective after the date of the agreement and that the Facility has the responsibility to know the law with respect to participation in the Medical Assistance Program.

At all times relevant to this action, Mercy Douglass and Stephen Smith Home were "providers" with valid provider agreements with the Pennsylvania Department of Public Welfare.

The Nursing Home Reform Act also mandates that the State shall be responsible for certifying, in accordance with surveys conducted by the state, the compliance of nursing facilities (other than facilities of the State)... The Secretary [Department of Health and Human Services] shall be responsible for

certifying..., the compliance of State nursing facilities with the requirements of such subsections. 42 U.S.C.A. §1396r(g)(1)(A).

The Pennsylvania Department of Health is responsible for performing the survey function of long-term care facilities in Pennsylvania. By state regulation, facilities are required to meet the daily nutritional needs of patients. 28 Pa. Code § 211.6(b). Additionally, if consultant dietary services are used, the consultant's visits must be at appropriate times and of sufficient duration and frequency to provide continuing liaison with medical and nursing staff and provide advice to the administrator and participate in the development and revision of dietary policies and procedures. 28 Pa. Code § 211.6(d).

Long-term care facilities are also required to provide nursing services that meet the needs of residents. The facility must have sufficient nursing staff to provide nursing and related services to attain or maintain the highest practicable physical, mental, and psychosocial well-being of each resident, as determined by resident assessments and individual plans of care. 42 C.F.R. §483.30. See also 28 Pa. Code § 211.12(a). There must be adequate staff to provide nursing care to all residents in accordance with resident care plans. 42 C.F.R. §483.30(a)(1).

Moreover, a nursing facility is required to retain a medical director who is responsible for the "coordination of the medical care in the facility to ensure the adequacy and appropriateness

of the medical services provided to the residents." 28 Pa. Code § 211.2(c).

Finally, a nursing home administrator is charged with the general administration of the facility whether or not his or her functions are shared with one or more other individuals. 63 P.S. § 1102(2). According to regulations promulgated by the Nursing Home Administrators Board, a nursing home administrator is responsible for: (a) evaluating the quality of resident care and efficiency of services, (b) maintaining compliance with governmental regulations, and (c) developing policies which govern the continuing care and related medical and other services provided by the facility which reflect the facility's philosophy to provide a high level of resident care in a healthy, safe and comfortable environment. 49 Pa. Code §§ 39.91(1)(i),(ii),(vi).

PRIOR COMPLIANCE HISTORY

1. The Health Care Financing Administration has imposed civil money penalties against Mercy Douglass based upon survey deficiencies discovered during years 1998 and 1999 concerning inadequate care rendered to residents of Mercy Douglass during that time period. Additionally, according to state surveys performed in 1996 and 1997, Mercy Douglass was found to have serious care deficiencies in several areas including the improper treatment of pressure ulcers, the provision of insufficient nursing staff, and inappropriate medication administration.

2. Stephen Smith Home has a long history of failing to provide adequate care to its residents. As a result of serious care deficiencies, Stephen Smith Home was terminated from the Medicare and Medicaid Programs on three separate occasions, yet was allowed back into both programs and was issued new provider numbers. Additionally, civil money penalties were imposed against Stephen Smith Home by HCFA in 1998 for the provision of inadequate care to its residents.

3. Despite the imposition of penalties and licensure and certification actions, the defendants continue to provide inadequate care to their residents.

4. The defendants caused the submission of false or fraudulent claims to the United States for payment for care that was not adequately rendered to frail and vulnerable elderly residing at Mercy Douglass and Stephen Smith Home.

FACTUAL BASIS FOR COMPLAINT

RESIDENT 1

Resident 1, a 60 year old man, was admitted to Mercy Douglass on August 30, 1995 with a diagnosis of multi-infarct dementia. Resident 1 had no pressure ulcers upon admission, weighed 144 pounds, ambulated with a walker, was independent in feeding and participated in activities.

Between June and October 1996, Resident 1 sustained approximately 5 falls while the nursing staff noted that Resident 1 was becoming more dependent. Resident 1 had four additional

falls between February and April 1997. On May 29, 1997 Resident 1 was admitted to the hospital with the diagnosis, “Rule out CVA” (cerebral vascular accident/stroke). On September 26, 1997, left-sided weakness was noted and by December 15, 1997, Resident 1 could no longer bear weight, and required a recliner and specialty bed. Resident 1 suffered a functional decline that was not adequately addressed by the care provided at defendant Mercy Douglass.

Resident 1 also suffered from progressive weight loss and loss of mobility without adequate medical, nursing, or dietary interventions to reverse Resident 1's progressive deterioration. Resident 1's weight, as recorded on December 15, 1997, was 114 pounds. On January 14, 1998, a percutaneous endoscopic gastrostomy (PEG) feeding tube was placed during a hospitalization. Despite enteral access via PEG tube, Resident 1's weight continued to decline. By February 5, 1998, Resident 1 had nine (9) pressure ulcers and a weight of 112 pounds. On February 27, 1998, Resident 1 had fifteen (15) pressure ulcers and a weight of 111 pounds. On March 24, 1998, Resident 1's weight was 104.4 pounds; fifteen (15) pressure ulcers were still present. On January 14, 1999 Resident 1 had twenty-three (23) pressure ulcers noted on the resident assessment form.

Between March and November, 1998 Resident 1 was hospitalized approximately ten times for multiple decubitus ulcers (pressure ulcers), dehydration, fever, and sepsis. Upon transfer back to

defendant Mercy Douglass, Resident 1's dietary and hydration needs were inadequately addressed on a regular basis, i.e., dietary supplements were not re-ordered; PEG tube water flushes were not consistently ordered or administered; and outdated tube feeding rates were resumed without documentation of rationale to support change.

Additionally, Resident 1 experienced severe pain on a regular basis. It was not until July 29, 1998 that Resident 1's attending physician ordered an analgesic stronger than Tylenol to be administered prior to pressure ulcer dressing changes. Medical and nursing progress notes documented Resident 1's demise, including the development of flexion contractures, with little or no documentation regarding pain assessment and intervention for this non-verbal resident.

A specialty bed was ordered by Resident 1's physician but was not provided in a timely fashion. Defendant Mercy Douglass's decision not to supply the specialty bed ordered was based solely upon cost and not the resident's health and safety. Defendant Mercy Douglass also failed to implement an individualized turning schedule necessary to prevent skin breakdown. A nursing care plan with a target date of May 10, 1998, documenting "Stage III ulcer (L) lower buttocks, sacrum and (L) hip" ordered turning and repositioning every two hours, a schedule generally designed to prevent skin breakdown. It was not until November 6, 1998, that a care plan was written with direction to reposition the resident

every hour and despite that order, Resident 1 continued, at times, to be repositioned every two hours. Ultimately, Resident 1 died on May 29, 1999.

After an autopsy was performed, the Deputy Medical Examiner for the City of Philadelphia concluded that Resident 1's cause of death was “sepsis and extensive decubiti”. Additionally, the Deputy Medical Examiner concluded that:

> Several of the ulcers, such as those of the legs and posterior lateral right lower chest and right arm are in areas not usually prone to decubitus formation and generally able to be easily prevented by simple nursing intervention such as appropriate padding.

Finally, the Deputy Medical Examiner found that “[t]he decedents[sic] cardiovascular system is in excellent condition for age and there are no changes of vascular insufficiency of the skin of the distal limbs indicating that he was not at risk of decubitus formation if provided adequate nursing care”.

RESIDENT 2

Resident 2 was admitted to defendant Stephen Smith Home on March 15, 1994 with diagnoses of degenerative joint disease, glaucoma, anemia, and hypertension. Resident 2's weight upon admission to Stephen Smith Home was 117 pounds. As identified in the Minimum Data Set for Nursing Home Resident Assessment and Care Screening (MDS), Resident 2 had no nutrition problems, no pressure ulcers, no behavior problems, and no cognitive deficit.

At the time of admission, Resident 2 was self-ambulatory via wheelchair.

During her stay at defendant Stephen Smith Home, Resident 2 experienced weight changes, a protein store deficiency, and the development of pressure ulcers without adequate medical, nursing, or dietary interventions to reverse the resident’s progressive deterioration. Resident 2 experienced a significant weight gain (up to 153.8 pounds in February, 1996), then a steady weight decline (1-2 pound per month weight loss through 1997), followed by a precipitous weight loss of 21 pounds in one month between October and November, 1998. During this time, medical, nursing, and dietary staff failed to implement an effective, individualized dietary care plan, failed to re-evaluate dietary plans that were not working, and failed to actively assess the nature of Resident 2's weight gain that was then followed by weight loss.

It should be noted that Resident 2 routinely was constipated as evidenced by documentation of constipation as a health condition on her March 11, 1997 Minimum Data Set. Resident 2 suffered from her first fecal impaction in February, 1997 and a second fecal impaction occurred again in May 1997. Resident 2 suffered from fecal impaction that should not have occurred had defendant provided Resident 2 with adequate nursing care.

Resident 2 was also prescribed an antipsychotic medication (Risperdal in tablet form) in February, 1998, which the resident

refused on a regular basis. Nursing home residents have the right to refuse this treatment as set forth in 42 C.F.R. §483.(b)(4).

In March, 1998, Risperdal was discontinued and Haldol concentrate was substituted. According to a psychiatrist's note, "Haldol concentrate is tasteless, and may be mixed with juice without detection". There was no documentation in Resident 2's record that the resident was aware of or had consented to the administration of the liquid medication. There was no documentation that consent was obtained from the resident's family or legal guardian.

According to federal regulations, antipsychotic drugs are to be given to a resident only after a comprehensive assessment of the resident and the facility must ensure that:

> (i) Residents who have not used antipsychotic drugs are not given these drugs unless antipsychotic drug therapy is necessary to treat a specific condition as diagnosed and documented in the clinical record; and
>
> (ii) Residents who use antipsychotic drugs receive gradual dose reductions, and behavioral interventions, unless clinically contraindicated, in an effort to discontinue these drugs.

42 C.F.R. §483.30 (l)(2)(i-ii).

Resident 2's daily dose of Haldol was <u>increased</u> every 3-4 weeks from 0.5 mg in March, 1998 to 1.5 mg in May, 1998 despite a

consultant pharmacist’s note that stated “Increased Haldol dose ... can’t find supporting behavior documentation in nursing notes.” No behavioral symptoms were recorded on Resident 2's Minimum Data Sets dated February 10, 1998 and May 26, 1998 that would support a need for antipsychotic medication. Moreover, there was no documentation that Resident 2 was ever a danger to herself or others which was a condition precedent established by her psychiatrist for the use of psychotropic medication.

On August 6, 1998, the resident’s albumin level was 1.8 gm/dl, a level identified by the laboratory as “critically low.” The resident’s August 6, 1998 prealbumin level was also low. These laboratory values evidence profound malnutrition. The medical, nursing, and dietary staff of Stephen Smith Home failed to request or order laboratory tests reflecting the resident’s state of protein depletion until the resident had lost over 33 pounds. No laboratory follow-up was provided as a result of the August 6, 1998 finding of a critically low albumin level. No additional tests for albumin or prealbumin were ordered during the resident’s stay at the long-term care facility and no dietary supplement or increase in protein intake was recommended until December, 1998.

Additionally, Resident 2 suffered from at least five pressure ulcers while at defendant Stephen Smith Home. By December, 1998, a sacral ulcer had become infected with “odor and thick green drainage.” While wound measurements were rarely noted

and facility pressure sore reports rarely utilized, the limited notations reflected significant size and depth to Resident 2's pressure ulcers. For example, on December 17, 1998, a nursing note identified a sacral pressure sore "2 x 4 x .5 with odor and thick green drainage...right knee (pressure sore) 2 x 2 with pink base...right heel 1 x 1 black soft area...right mid-back/scapula 5 x 9 open blister." There was, however, no note as to whether the measurements were in centimeters or in inches.

Medical, nursing, and dietary staff of defendant Stephen Smith Home failed to document evidence of consistent wound assessment and care planning; physician's wound care orders were not followed by nursing staff; and individualized turning and repositioning plans were not implemented by nursing staff.

Finally, according to the Chief Deputy Coroner for Montgomery County, Resident 2 died on January 30, 1999 as a result of sepsis and decubitus ulcers.

Jurisdiction and Venue

5. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345 and 31 U.S.C. § 3729 et seq.

6. Venue is proper in the Eastern District of Pennsylvania under 28 U.S.C. §§ 1391 (b) and (c).

Parties

7. Plaintiff is the United States of America acting for itself, the Department of Health and Human Services-Office of Inspector General, the Health Care Financing Administration, the

Medicare Trust Fund, the Medical Assistance Program and the beneficiaries thereof.

8. Defendant, Mercy Douglass Human Services Corporation, d/b/a, Mercy Douglass Human Services Center is a licensed and certified 180-bed long-term care facility located at 4508-38 Chestnut Street, Philadelphia, PA 19139.

9. Defendant, Mercy Douglass Center Inc., d/b/a, Stephen Smith Home for the Aged is a licensed and certified long-term care facility located at 4400 West Girard Avenue, Philadelphia, PA 19104.

COUNT I

FALSE CLAIMS ACT: 31 U.S.C. § 3729

10. The above paragraphs are realleged as though fully set forth herein.

11. The provision of adequate nutrition to residents of defendants' long-term care facilities was the responsibility of not only the nutritionists and dietary staff but included the nursing and medical staff as well.

12. The provision of adequate wound care to residents of defendants' long-term care facilities was the responsibility of the nursing and medical staff.

13. The provision of appropriate medications to residents of defendants' long-term care facilities was the responsibility of the nursing and medical staff.

14. Agents and/or employees of defendants were responsible for the provision of nursing, wound care, nutritional services and appropriate medications to Residents 1 and 2 as well as to all of the residents of defendants' long-term care facilities.

15. Defendants billed the government for care provided to Residents 1 and 2 and for other residents of their facilities for reimbursement by the Medicare and Medical Assistance Programs.

16. Agents and/or employees of defendants, submitted false, fictitious or fraudulent claims to the Pennsylvania Department of Public Welfare, Medical Assistance Program for nutritional, nursing, dietary and wound care services that were not adequately rendered to Residents 1 and 2 for the time period May 1997 through February 1999.

17. Defendants, as licensees for Mercy Douglass and Stephen Smith Home, were responsible for the care rendered to residents at defendants' facilities and caused the repeated submission of false, fictitious or fraudulent claims to the Pennsylvania Department of Public Welfare, Medical Assistance Program, and to the Medicare Program for nutritional, dietary, wound care and nursing services that were not adequately rendered to Residents 1 and 2 for the time period May 1997 through February 1999. 31 U.S.C. § 3729.

18. Defendants knowingly and willfully did not ascertain the truth or falsity of the claims for services submitted to the Pennsylvania Department of Public Welfare and to the Medicare Program for payment on behalf of Residents 1 and 2, both of whom were Medical Assistance recipients and Medicare beneficiaries. 31 U.S.C. § 3729.

19. Defendants acted in reckless disregard of the care and services ordered and actually provided to Residents 1 and 2 while residing at Mercy Douglass Human Services Center and Stephen Smith Home when billing the Medicare and Medical Assistance Programs. 31 U.S.C. § 3729.

20. Upon information and belief, the United States alleges that the care provided to Residents 1 and 2 was representative of the inadequate care rendered to residents of defendants' long-term care facilities. The care rendered was inadequate in terms of medical care, nursing care, nutrition, and wound care, all of which were the responsibility of the defendants' Nursing Home Administrators, the Medical Directors and the Directors of Nursing. The claims submitted by defendants for the care of these residents would thus constitute false claims actionable under the False Claims Act to the same extent as the claims for Residents 1 and 2.

21. The United States was damaged as a result of the conduct described above.

WHEREFORE, plaintiff United States of America demands and prays that judgment be entered in its favor and against the defendants, jointly and severally as follows:

a. an amount equal to the number of false or fraudulent claims that will be proven at trial, multiplied as provided for in 31 U.S.C. § 3729(a) and imposition of $10,000.00 per claim;

b. three times that total amount of damages sustained by the United States because of the acts complained of;

c. costs of this action;

d. such other and further relief as the Court shall deem proper.

COUNT II: UNJUST ENRICHMENT

22. The foregoing paragraphs are incorporated herein by reference as if fully set forth.

23. The conduct described in the foregoing paragraphs caused all defendants to receive, directly or indirectly, benefits from the United States.

24. Under the circumstances described in the foregoing paragraphs, as between the United States and each defendant in this Count, retention by each defendant of the benefits conferred by the United States would be unjust.

WHEREFORE, plaintiff the United States of America demands judgment in its favor and against defendants, jointly and severally, and relief as follows:

a. an amount equal to the gain to the defendants as a result of the activities complained of;

b. interest according to law;

c. costs of this action; and

d. such other and further relief as this Court may deem proper.

Respectfully submitted,

MICHAEL R. STILES
UNITED STATES ATTORNEY

JAMES G. SHEEHAN
ASSISTANT U.S. ATTORNEY
CHIEF, CIVIL DIVISION

DAVID R. HOFFMAN
ASSISTANT U.S. ATTORNEY

Dated: July 10, 2000